HONOURABLE SMT. JUSTICE T.MEENA KUMARI
&
HONOURABLE SRI JUSTICE G. CHANDRAIAH

WRIT PETITION No:14465 OF 2007

Dated: 06.07.2007

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Between:

P.M. Goreeswara Rao

..Petitioner

And

1. Institute of Preventive Medicine rep.,
by its Director, Public Health Labs &
Food (H) Administration, Narayanaguda,
Hyderabad and others.

..Respondents.

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HONOURABLE SMT. JUSTICE T.MEENA KUMARI
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ORDER: (per Hon'ble Smt. Justice T. Meena Kumari)

The present writ petition is filed by the petitioner-3rd party with the leave of the Court seeking to declare the action of the 1st respondent herein without carrying the amendment of Special Rule –V in G.O.Ms.No.459, dated 8.9.1994 as per the judgment of the Tribunal dated 10.2.2006 by relying upon the recommendations made by the 2nd respondent and ignoring the promotion of the petitioner and proposing to consider the 3rd respondent's promotion as Junior Analyst in the existing vacancy of Visakhapatnam zone as illegal, improper and arbitrary and consequently, to set aside the judgment in O.A.No.6414 of 2006, dated 7.3.2007.

The 3rd respondent herein is the applicant before the Tribunal.

Originally, the 3rd respondent filed the above O.A. against respondents 1 and 2 seeking to declare the action of the 1st respondent in not filling up the vacancy of Junior Analyst from the category of Lab-Technician in spite of recommendation made by the 2nd respondent through proceedings Rc.No.443/Estt./RL-VSP, dated 28.8.2006 as illegal and arbitrary and consequently, to direct the 1st respondent to consider the claim of the applicant for promotion to the post of Junior Analyst, as per the rules existing as on the date of availability of vacancy of Junior Analyst in the office of the 2nd respondent.

The tribunal disposed of the O.A. directing the 1st respondent to consider and pass appropriate orders on the recommendations made by the 2nd respondent vide proceedings dated 28.8.2006 in accordance with the rules, within a period of six weeks from the date of receipt of the order. Having aggrieved by the same, the petitioner-3rd party to the O.A., filed the present writ petition.

Heard the learned Counsel for the petitioner and the learned

Government Pleader for Medical Health and Family Welfare.

It is the contention of the learned Counsel for the petitioner that on the earlier occasion, the petitioner herein filed O.A., in which, the tribunal directed the 1st respondent to amend the rule in respect of qualification to the promotional post of Junior Analyst and pending the said amendment, the 3rd respondent approached the tribunal seeking a direction to consider his case for promotion and the tribunal directed the 1st respondent to consider the case of the 3rd respondent and that the petitioner is the senior most and until and unless the amendment is carried out, as directed by the tribunal in the earlier O.A., the case of the 3rd respondent-applicant cannot be considered and therefore, the tribunal is not justified in directing the 1st respondent to consider the case of the 3rd respondent-applicant.

On the other hand, the learned Government Pleader contends that it is only a direction and there is no such illegality or irregularity in the order of the tribunal and therefore, it needs no interference by this Court.

Before going into the merits of the case, it is not out of place to mention the facts of the case in brief.

It is the case of the petitioner-3rd party, who is working as a sample taker, that as per Rule V of G.O.Ms.No.459, dated 8.9.1994, the qualification prescribed for promotion to the post of Junior Analyst is B.Sc., degree with Chemistry apart from Lab Technician training certificate and that though he possesses B.Sc degree with chemistry, he has not been considered for promotion since he is not having Lab Technician Training certificate. It is also the case of the petitioner that since some of the sample Takers, who are not having Lab Technician Training course, were considered for promotion, the petitioner filed O.A.No.4405 of 2004 challenging the promotions given to the persons, who were not having eligibility and seeking to consider his case for promotion on par with others. On the undertaking given by the 1st respondent, the tribunal disposed of the O.A. directing the 1st

respondent to amend the rule. Pending the amendment, a vacancy arose and the respondents are proposing to fill up with other person. Hence, the petitioner filed W.P.No.18302 of 2006 and the same is pending. Meanwhile, the 3rd respondent herein filed a petition to implead him in the W.P. and also filed O.A.No.6414 of 2006 seeking to consider his case for promotion, in which, the tribunal directed the 1st respondent to consider the case of the 3rd respondent. Hence, the 1st respondent is proposing to consider the case of the 3rd respondent for promotion though the petitioner is the senior most candidate.

We have perused the order impugned. A perusal of the order impugned goes to show that it is a direction to the 1st respondent to consider the recommendations made by the 2nd respondent on the representation made by the 3rd respondent in respect of his promotion. Except stating that the 1st respondent was directed to amend the rule in respect of requisite qualification to the promotional post, as ordered by the Tribunal, the petitioner did not make any efforts to putforth his case before the authorities by way of any representation. It is the case of the petitioner that if the 3rd respondent-applicant is promoted, he will be put to serious loss. The order impugned clearly goes to show that it is a direction to consider the recommendations.

If it is the case of the petitioner that the direction given in the O.A filed by the petitioner, is not complied with, the remedy is always available for him. But, instead of availing such remedy, by anticipating and apprehending that the case of the 3rd respondent-applicant may be considered for promotion, the approach of the petitioner herein who is a third party, before this Court is a premature one.

In this view of the matter, we do not find any reason to interfere with the order impugned and we see no merits in this writ petition and the same is liable to be dismissed.

At this stage, the learned Counsel for the petitioner sought liberty of this Court to make appropriate representation with regard to

the promotion of the petitioner before the 1st respondent, if not already filed.

Accordingly, this writ petition is dismissed. No order as to costs. However, the petitioner is at liberty to make an appropriate representation before the 1st respondent, if not already filed, within a period of two weeks from today and the same shall be disposed of in accordance with law.

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Justice T. Meena Kumari

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Justice G. Chandraiah

Date: 6th July, 2007
Nn/Gurc.

HONOURABLE SMT. JUSTICE T.MEENA KUMARI
&
HONOURABLE SRI JUSTICE G. CHANDRAIAH

WRIT PETITION No:14465 OF 2007

(Order delivered by the Hon'ble Smt. Justice T. Meena Kumari)

06.07.2007